Arkansas	1	Missouri	1
Canada	1	North Carolina	1
Connecticut	1	Pennsylvania	3
Florida	1	Tennessee	5
Georgia	3	Texas	1
Illinois	1	Virginia	65
Kentucky	5	West Virginia	4
Maryland	1	Wyoming	1
Mexico	1		
		Total	96

The loss of Professor Dobie, who left last May on an indefinite leave of absence to attend the Reserve Officers' Training Camp at Fort Myer and who is now a Captain of Infantry at Camp Lee, Petersburg, Virginia, is keenly felt by the Law School. Mr. Forrest Hyde, who was Graduate Instructor in the Law Department last year, has been made adjunct professor and will take charge of Professor Dobie's work until his return. Due to the small enrollment this year, the instructor system has been dispensed with for the present.

VALIDITY OF STATUTE LIMITING HOURS OF LABOR IN MILLS, FACTORIES, OR MANUFACTURING ESTABLISHMENTS.—In the recent case of *Bunting* v. *Oregon*, 37 Sup. Ct. 435, the second section of an Oregon statute,[1] providing that "no person shall be employed in any mill, factory, or manufacturing establishment in this state more than ten hours in any one day except watchmen and employees when engaged in making necessary repairs or in case of emergency where life or property is in imminent danger" with a proviso that "employees may work overtime not to exceed three hours in any one day, conditioned that payment be made for such overtime at the rate of time and one half of the regular wage" was upheld by a divided court as being consonant with the Fourteenth Amendment of the Federal Constitution, inasmuch as the law was a proper exercise of the police power of the State.

The right of a State, in the exercise of its general police power, to make such regulations as are necessary for the health and welfare of its citizens, is not denied, and has been affirmed by numerous decisions of both the federal and state courts, especially as regards the regulations of industries of an inherently hazardous or peculiarly unhealthy nature, or those wherein women and children are employed.[2] But in the decision referred to, it was con-

[1] Oregon Laws, 1913, chap. 102.

[2] Richie *v.* People, 155 Ill. 98, 40 N. E. 454, 46 Am. St. Rep. 315, 29 L. R. A. 79; Cantwell *v.* State of Missouri, 199 U. S. 602; Holden *v.* Hardy, 169 U. S. 366; In re Morgan, 26 Colo. 415, 58 Pac. 1071, 47 L. R. A. 52, 77 Am. St. Rep. 269; Wenham *v.* State, 65 Neb. 394, 91 N. W. 421, 58 L. R. A. 825; Muller *v.* Oregon, 208 U. S. 412.

tended on behalf of the accused, that the statute was not a health regulation but a wage law, and that as such it took the property of an employer without due process of law. This contention raised two questions, the first of which was considered at some length by the court, viz.: (1) Is the law a wage law or an hours of service law? (2) If the latter, does it discriminate unfairly against the class of employers enumerated in the statute?

In determining the real nature and actual effect of any law, one of the first considerations of a court should be the purpose of the legislature in enacting it. Of course a legislature cannot give a certain character to a statute by merely declaring that it is a law of such and such a nature;[3] but it is perfectly proper for a court to give due weight to the motives, which impelled the enactment of any law, in determining the true character thereof. In the particular statute under consideration, it is stated in the first section that the policy impelling the legislature to pass the law was the interest of the state in the general health and welfare of its citizens, and the fact that it was injurious for them to work under the conditions as enumerated in Section 2. Therefore, upon its face, at least, the law was enacted as a valid exercise of the police power. However, the plaintiff in error sought to show that the intention of the law was in fact different from that set forth in Section 1, in the following respects: (1) "The law is not a ten hour law; it is a thirteen hour law designed solely for the purpose of compelling the employer of labor in mills, factories, and manufacturing establishments to pay more for labor than the actual market value thereof." (2) "It is a ten hour law for the purpose of taking the employer's property from him and giving it to the employee; it is a thirteen hour law for the purpose of protecting the health of the employee."

The contention that the law was a thirteen hour wage law is based on the fact that under the statute an employer would have to pay for fifteen hours' work when he received in return therefor only thirteen hours of actual work. This sounds quite plausible at first glance, but the court ruled that the clause allowing three hours additional work *per diem,* if paid for at one and one half the regular rate, though permissive in fact, was essentially penal in nature, and that therefore the law was not a wage law but rather an hours of service law. The purpose of the proviso, in regard to extra hours of service, was to deter by its burden, and the mere fact that, in some instances, it might fail to do so, could make no material difference. The adequacy of the penalty was a matter for the legislative judgment, the wisdom of which could not be questioned by the court.

The second contention of the plaintiff in error that the law, as a wage law, discriminated against the employers, in the classes of industries enumerated, in favor of those who could buy their labor on the open market, without falling under the provision of the

[3] Coppage v. Kansas, 236 U. S. 1, L. R. A. 1915C, 960.

law as to overtime pay, ceased to have any foundation when the court ruled that the law was not a wage law.

There was a further contention raised by the plaintiff in error that the law, even regarded as regulating hours of service, was neither necessary nor useful in preserving and protecting the health of employees in mills, factories, and manufacturing establishments, and therefore did not come within the recognized limits of the state police power. The court answered this point by saying, "The record contains no facts to support the contention, and against it is the judgment of the legislature and the supreme court" [of Oregon], and quoting from the judgment of the state court to the effect that "In view of the well-known fact that the custom in our industries does not sanction a longer service than ten hours per day, it cannot be held, as a matter of law, that the legislative requirement is unreasonable or arbitrary as to hours of labor. Statistics show that the average daily working time among working-men in different countries is, in Australia, 8 hours; in Great Britain, 9; in the United States, 9¾; in Denmark 9¾; in Norway, 10; Sweden, France, and Switzerland, 10½; Germany 10¼; Belgium, Italy, and Austria, 11; and in Russia, 12 hours." From the foregoing very scant and brief consideration given to the question of such wide extension of the police power, so as to cover all employees in industries of a general nature, the conclusion seems inevitable that the Supreme Court has finally sanctioned such an extension as not being in contravention of the Fourteenth Amendment. This would seem at first glance to be a considerable departure from the doctrines of the former cases along the same line, but a closer scrutiny will, it is believed, disclose the fact that this latest decision is but the result of the gradual expansion and growth of the limits of the State police power as established by the courts.

The first case involving an interpretation of the Fourteenth Amendment in its relation to the police power was decided by the United States Supreme Court in 1872.[4] In that case was laid the foundation for the future development and expansion of the power to meet the rapidly changing economic and social conditions of the country. The court itself then recognized the rather inexact and undefinable nature of the police power in quoting Chief Justice Shaw [5] to the effect that "it is much easier to perceive and realize the existence and sources than to mark its boundaries, or prescribe limits to its exercise." In several cases decided a decade or more later,[6] the police power was generally recognized as extending to regulations concerning industries affecting the health, welfare, or morals of the public, or those engaged in labor, but no attempt was made to enumerate all such industries, each case

[4] Slaughter House Cases, 16 Wall. 36.
[5] Commonwealth *v.* Alger, 7 Cush. (Mass.) 53.
[6] Barbier *v.* Connolly, 113 U. S. 27; Soon Hing *v.* Crowley, 113 U. S. 703; Yick Wo *v.* Hopkins, 118 U. S. 356.

being decided with reference to the particular business involved and the reasonableness of the regulations affecting it. Yet it was clearly recognized that the police power could not be put forward as an excuse for oppressive and unjust legislation, although it had been previously declared that a large discretion "is necessarily vested in the legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests." [7]

One of the earliest cases decided by the United States Supreme Court in regard to the regulation of hours of service by virtue of the police power is that of *Holden* v. *Hardy* [8] wherein a statute of the State of Utah, regulating the hours of employment of miners and those working in smelters, was held to be constitutional on the ground that the industries so regulated were of a peculiarly unhealthy nature and that the regulation was reasonably necessary for the protection of the health of those engaged therein. Although not outspoken on the question, the court, in its opinion, in several places intimated that a law regulating hours of employment in industries in general would be unconstitutional as not being necessary for the protection of the health of workers, and as impairing unwarrantedly the freedom of contract. In *Atkin* v. *Kansas* [9] a statute, regulating the hours of employment on public works, was upheld, even though it might have no very direct relation to the public health, on the broad ground of public policy, upon which a state could prescribe the conditions under which it would allow public work to be done. The court declined to pass upon the question whether a similar statute applicable to laborers on purely private work would be valid. In *Lochner* v. *New York*,[10] a statute, forbidding employees in bakeries to work more than sixty hours in a week or ten hours in a day, was declared to be unconstitutional (the Court dividing, five to four), as not being a legitimate exercise of the police power of the state, but an unreasonable, unnecessary, and arbitrary interference with the right and liberty of the individual to contract, in relation to labor, inasmuch as the law had no reasonable relation to the health of those involved.

The court said,[11]

> "We think the limit of the police power has been reached and passed in this case. There is, in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the public health or the health of the individuals who are following the trade of a baker."
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> "There must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant leg-

[7] Lawton *v.* Steele, 152 U. S. 133.
[8] 169 U. S. 366.
[9] 191 U. S. 207.
[10] 198 U. S. 45.
[11] *Id.*, p. 58.

islative interference with liberty. It is unfortunately true that labor, even in any department, may possibly carry with it the seeds of unhealthiness. But are we all, on that account, at the mercy of legislative majorities? A printer, a tinsmith, a locksmith, a carpenter, a cabinet maker, a dry goods clerk, a bank's, a lawyer's, or a physician's clerk, or a clerk in almost any kind of business, would all come under the power of the legislature on this assumption." [12]

In a still later case,[13] a statute of the State of Oregon, regulating the hours of employment for women only, in certain industries, was held to be valid on the ground that the difference in capacity for work, as well as in physical functions, which exists between the two sexes, justified a law for women which might perhaps, if applied to men, be beyond the proper limits of the police power. And in a very recent case the validity of a federal statute regulating the wages of railroad employees was upheld.[14] The decision in *Bunting* v. *Oregon*,[15] then, viewed in the light of the preceeding cases, seems to be but a logical and almost inevitable extension of the doctrines enunciated therein, if we except the decision in *Lochner* v. *New York*,[16] to which it seems to be in absolute contradiction. In this connection the observation of the court in *Muller* v. *Oregon*,[17] is of no little interest. "When a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge." Truly the court has in its latest decision not only given worthy consideration to the questions of fact involved, but also, it has removed many heretofore existing doubts as to the existence of such facts, in so far as they are capable of giving validity to laws previously regarded as being unconstitutional.

SERVICE OF PROCESS FOR PERSONAL JUDGMENT ON AN OFFICER OR AGENT OF A FOREIGN CORPORATION RESIDENT WITHIN THE STATE.—It is elementary that, since a corporation is an artificial being created by the laws of the state in which it is incorporated, its domicile is in the state whose laws gave it existence.[1] It must dwell in the state of its creation and can not migrate to another sovereignty.[2] But, while a corporation must live and have its

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[12] *Id.*, p. 59.
[13] Muller *v.* Oregon, 208 U. S. 412.
[14] Wilson *v.* New, 37 Sup. Ct. 298. See article entitled "The Eight Hour Railway Wage Law" in 4 VA. LAW REV. 83.
[15] *Supra.* [16] *Supra.* [17] *Supra.*
[1] Holbrook *v.* Ford, 153 Ill. 633, 46 Am. St. Rep. 917.
[2] Bank of Augusta *v.* Earle, 13 Pet. 519; Clarke *v.* Bank of Mississippi, 10 Ark. 516, 52 Am. Dec. 248; Taylor *v.* Branham, 35 Fla. 297, 39 L. R. A. 362; Douglass *v.* Phenix Ins. Co., 138 N. Y. 209, 33 N. E. 938, 20 L. R. A. 118.